THE SENATE OF CANADA

PROCEEDINGS OF

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL (C), AN ACT TO AMEND THE COMPANIES ACT

(TOGETHER WITH SUGGESTED AMENDMENTS SUBMITTED BY WITNESSES)

No. 2

The Hon. F. B. BLACK, Chairman

WITNESSES:

Mr. P. F. Casgrain, K.C., M.P.

Mr. E. G. Long, K.C., representing Investment Bankers' Association of Canada

Mr. G. S. Stairs, K.C., Montreal, P.Q.

Mr. Frank B. Common, K.C., Montreal, P.Q.

Hon. Adrian K. Hugessen, K.C., Montreal, P.Q.

THE SENATE

STANDING COMMITTEE
ON
Banking and Commerce
1929

THE HON. F. B. BLACK, *Chairman*

Hon. Sir Allen Aylesworth, K.C.M.G., P.C., K.C.
Hon. C. P. Beaubien, K.C.
Hon. F. L. Beique, P.C., K.C.
Hon. N. A. Belcourt, P.C.
Hon. F. B. Black
Hon. J. A. Calder, P.C.
Hon. J. P. B. Casgrain
Hon. N. Curry
Hon. R. Dandurand, P.C., K.C.
Hon. J. W. Daniel, M.D.
Hon. J. H. Fisher
Right Hon. Sir George Foster, G.C.M.G., P.C.
Hon. G. G. Foster, K.C.
Hon. A. Haydon
Hon. J. J. Hughes
Hon. H. W. Laird
Hon. D. O. L'Esperance
Hon. W. H. McGuire
Hon. J. S. McLennan
Hon. L. McMeans, K.C.
Hon. C. Murphy, P.C., K.C.
Hon. A. E. Planta
Hon. J. D. Reid, M.D., P.C.
Hon. J. H. Ross
Hon. F. L. Schaffner, M.D.
Hon. E. D. Smith
Hon. C. E. Tanner, K.C.
Hon. J. D. Taylor
Hon. J. Tessier
Hon. I. R. Todd
Hon. J. G. Turiff
Hon. L. C. Webster
Hon. R. S. White
Hon. W. B. Willoughby, K.C.

ORDER OF REFERENCE

EXTRACT *from the Minutes of Proceedings of The Senate of Canada, 15th February, 1929*

Pursuant to the Order of the Day, the Bill (C), intituled: "An Act to amend the Companies Act," was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

84170—1½

MINUTES OF EVIDENCE

THE SENATE,

WEDNESDAY, April 17, 1929.

The Standing Committee on Banking and Commerce to whom was referred Bill C, intituled "An Act to amend The Companies Act," met this day at 10.30 a.m., Honourable Mr. Black in the Chair.

The CHAIRMAN: Gentlemen, we are ready to proceed with Bill C.

Mr. MULVEY (Under-Secretary of State): The gentlemen who are here to make representations on the Bill will do so generally, and it will be very difficult to have them make comments on the clauses one after another. Their comments will be directed to the underlying principles of the Bill, which will cover many clauses.

Hon. Mr. WEBSTER: You might confine the matter to those sections to which there is objection.

The CHAIRMAN: Those who are appearing in this matter are:—

Pierre F. Casgrain, Esq., M.P., Montreal, P.Q.

E. G. Long, Esq., K.C., on behalf of the Investment Bankers' Association of Canada.

G. S. Stairs, Esq., K.C., of the firm of Messrs. McGibbon, Mitchell & Stairs, Barristers, Montreal, P.Q.

Frank B. Common, Esq., K.C., of Messrs. Brown, Montgomery & McMichael, Barristers, Montreal, P.Q.

Hon. Adrien K. Hugessen, K.C., of Messrs. Lafleur, Macdougald & Barklay, Barristers, Montreal, P.Q.

Gordon Hyde, Esq., K.C., of Smith, Markey, Hyde, Skinner & Ahern, Barristers, Montreal, P.Q.

Mr. P. F. CASGRAIN, M.P.: Mr. Chairman and honourable gentlemen, these gentlemen have asked me to represent them and to introduce them to your committee. They are all gentlemen who are well versed in The Companies Act and in financial institutions, and they have representations to make in regard to certain proposed amendments to The Companies Act.

Mr. JOHN APPLETON: Representing the Dominion Mortgage and Investments Association, I would like to say a word.

Hon. Mr. DANDURAND: Some of the parties who are here are to speak of the clauses covering investment trust companies. A Bill respecting investment companies has been prepared, but it has to come from the Department of Justice, and unfortunately it has not reached the Senate in time to be placed before you. It is my intention to suggest, after we have heard the argument of the companies to-day, that we adjourn to another day, perhaps next week, when we shall have the Bill which I intend to introduce this afternoon or to-morrow in the Senate.

Mr. APPLETON: Mr. Chairman, the Bill may cover the points I would like to bring to the attention of the committee.

Mr. P. F. CASGRAIN, M.P.: Mr. Long, of Toronto, is here.

The CHAIRMAN: Very well; we will hear Mr. Long.

Mr. E. G. Long, K.C.: Mr. Chairman and honourable gentlemen, I am speaking on behalf of the Investment Bankers' Association of Canada, an association which comprises among its members practically all of the houses that are engaged in the investment and banking business of selling to the public bonds and shares in securities of companies in Canada, and on their behalf I wish to draw to your attention certain matters and to register certain objections that we have to three or four main principles in the Bill.

The first item is in regard to what I have termed the prospectus sections, grouped under sections 15 to 18 of the Bill.

At the present time in the present Act we have prospectus sections which require the filing of a prospectus, or of a statement in lieu of prospectus, in connection with companies. The actual practice is that a statement in lieu of prospectus is filed with the Secretary of State, and the prospectus in the lengthy form required by the Act, with all the information under various sub-heads, has not gone out to the public for the obvious reason that it is practically impossible to do so. The present amendment requires not only the company who is marketing its securities, but any banking house or any underwriter who buys part or all of the securities with the intention of offering them to the public, to furnish this prospectus with the statutory information.

We take it that the object of the prospectus is for the information and protection of the investor so that the information which the wisdom of Parliament has crystallized into these various sub-heads will come before him and by a wild stretch of imagination, if I may humbly suggest, give him sufficient information to make up his mind as to whether the security is good or bad. We feel that this type of prospectus given to the investor is not sound protection. Experience in the last decade or so has shown that that is not really the case. And the objection we are taking under this heading is that first of all you cannot by a crystallized form of half a dozen or so sub-headings give sufficient information in every single class of business which comes under Dominion incorporation to let the investor make an independent decision on that stereotyped information as to the soundness of a security.

The second point is that a similar type of protection found in what are known as Blue Sky laws was originated years ago in the United States. The principle was that a company to float its securities had to give information to a government official. The government official said whether the security was good or bad, and if he thought it was good he gave his approval and allowed it to be sold to the public. Experience in the last ten or fifteen years in the United States has shown that this system has not operated as a protection to the investor. Still less, we think, has the information this Bill requires to be sent out to the investor in the form of a prospectus, any real basis on which they can reach a real conclusion. And I have received from the council of the Investment Bankers' Association of America, which comprises ninety per cent of the investment banking houses of the States—after communication with them regarding their experience in regard to this information which is given under the Blue Sky law and which has been made free to the public—their opinion that these types of law requiring this information have not been found satisfactory; that they have not prevented investment in unsound securities; and that the investor is not getting the protection which was anticipated.

That was the early step to try to give information to the investor via a government official. Practical experience has developed in the United States and in a number of our provinces the theory that the way to protect the investor is to have some sort of control over the individual who goes out and tries to sell securities; and that the government should be satisfied that that man is reputable, and, having control over him, if he over-steps the bounds of proper business and honesty that he be immediately punished. Then you have, according to the experience of the last five, six or seven years in the

United States, and for a year in Ontario, the best protection which you can give, so far as practical experience goes, to the investor when he is buying securities. The prospectus sections require filing in Ottawa; and there are other jurisdictions in which prospectuses must be filed; so that you have in Canada a multiplicity of jurisdictions all of which may require a prospectus in their own particular form.

Recently, the control by the provinces has been very marked in legislation such as was brought down in Ontario a year ago called the Security Frauds Prevention Act, which, in effect, requires all people engaged in the selling of securities to become registered with the Provincial department under the control of the Attorney General. Nobody can sell securities in Ontario unless he has a registration license; and that has given the province the control over the human element that meets the investor. This has shown very satisfactory results, and the Attorney General's department was so good as to write me a letter stating that they have found the Security Frauds Prevention Act, with its licensing powers, "a satisfactory protection to investors and a reasonable curb of the activities of fraudulent promoters."

Accompanying that Act giving control over the salesmen is the Companies Information Act which requires the companies on the sale of their securities to put on file in the Attorney General's department, or the company's branch, a certain amount of information, somewhat more lengthy than what you have in the draft bill here. That gives the Attorney General's department information in regard to the company, so that there is a double check in their control over the salesman and information in regard to the company. If the information is found not satisfactory it acts immediately through his control over the salesman who is selling those securities.

Hon. Mr. McMeans: That applies to Ontario only?

Mr. Long: This plan in Ontario has been adopted almost verbatim—the statute has been copied almost verbatim in Saskatchewan and Alberta this year, and the principle has been adopted in Manitoba. So that in Alberta, Saskatchewan, Manitoba and Ontario you have this control; that is the double control over the salesman plus the information which goes in as a government record; and in Quebec they have the necessity for filing a very lengthy return —the most complete information of any of the provinces. Our information is that the provincial control over these matters is so complete now that the necessity for burdening companies with information which we consider unnecessary, or which I submit is unnecessary, no longer exists; that to make of value to the public what this Act would require does not need the amendment which we have got in the Act before us. The control by the provinces gives the investor throughout Canada the best protection he can get. That is the general principle that we submit in regard to the protection of the investor.

Assuming from a practical point of view that the banking houses will have to comply and that the requirements of the Act are lived up to by the reputable people in the business; the people we want to catch are the fraudulent promoters who are committing, knowingly, frauds; who are selling, knowingly, unsound securities; and who would be taking the chance of paying practically no more attention to the Statute than they do to the Criminal Code. If we are bound as legitimate dealers to comply with this, see what the practical burden is. You have information in your prospectus running from subhead (*a*) to subhead (*p*) in section 51, and one only needs to take up two of these sections to emphasize the amount of information.

Subsection (*a*) "the main purposes or objects of the company . . ." You gentlemen know, and Mr. Mulvey knows, that the objects in a Dominion company run to pages and pages of typewriting.

Another reference is to subsection "*f*" which requires the names and addresses of the vendors of any property and the consideration they get. You will find in flotations of any particular size, particularly where one company may be taking over the shares from individuals or another company, that you may have a list of hundreds of names.

Hon. Mr. DANDURAND: That is not brought in by this bill.

Mr. LONG: No, sir; but the point is that in the Act as it has been administered up to date there has been a sufficient compliance with it, to file your statement in lieu of prospectus which no one objects to. It gives Mr. Mulvey his record of the position of the company. But this new clause is a case where every time you give a notice offering securities for sale, every time you advertise, every time you write a letter, if you telegraph, you are within the definition of the prospectus sections; because, under the Act, a prospectus is described as any notice calling or suggesting that shares are for sale. If you write a circular letter to prospective customers then you have to give the information required by the sixteen subsections.

Another item: Under subsection "*n*," for instance, where you have to give the particulars as to the different classes of stock, as Mr. Mulvey will bear me out, preference stock conditions are run to enormous typewriting length. There are preferences as to dividends and assets, provisions for redemption, for conversion, voting and non-voting rights, conditions against mortgages or other issue of securities; and you will have pages of typewriting in any corporation issue of any size to comply with that one item; and our contention is that if this section is maintained, and if its requirements are lived up to, namely, that every time a company, or every time an underwriting house that buys the shares makes a suggestion to any customer that such customer should invest his money in such securities, then a volume has to be given to him if the section is honestly lived up to.

Speaking for our association, we feel that there is sufficient honest desire to comply with any statutory requirements that it will be done if it has to be done; and, if so, you are forcing on the financial community a burden which will be almost impossible of fulfilment; and I submit that legislation which is practically impossible of practical fulfilment is not the kind of law which this Parliament usually enacts. It simply brings the law into disregard or contempt simply through the impossibility of an honest man living up to it.

The second burden is that the Act requires not only companies but every underwriter to give this prospectus information; and, in addition to that, there is a clause that a prospectus must accompany all applications for purchase of securities. That raises two practical questions. Securities are sold very largely in Canada through personal contact and other personal conditions. That brings in the element of the salesman, and it is obvious that all salesmen do not always live up to all the instructions which are properly given to them. A salesman goes out to sell securities and infringes a provision of the Act. When he gets an application from a customer he does not give him the prospectus. There is a disregard of the mandatory provision of the statutes of Canada. What may happen? There is liability on the company for non-compliance with the Act. And there is, undoubtedly, the question as to whether such application is binding on the customer. It may not be valid through non-compliance with this regulation. The customer can at any time come back to the issuing house or to the company itself and say: "The arrangement we entered into is a nullity; I want my money back." And it is a very serious question in the mind of the companies and underwriters as to whether the subscriptions they have received in good faith could, at a future time, be cancelled or set aside on account of failure to comply with this mandatory provision. The clauses in the Act

relating to underwriters and companies furnishing the prospectus to their customers is really a copy of the English Act of 1928, and the English practice of doing business is quite different from the practice in Canada. You gentlemen know that probably better than I do. A very striking example is this: In England it is a crime for a person selling securities to go to the individual at his home and try to sell him any security.

Hon. Mr. TESSIER: It is a crime?

Mr. LONG: By Act of Parliament brought into force in 1928. In the United States and Canada a very substantial portion of the distribution of securities is done in a way which, if done in England, would render the seller liable to go to jail. So that there is that difference in the two principles underlying financial matters as between Canada and this continent, and England; and for that reason, while one bows to the wisdom of the English Parliament and to the English financial world, we must recognize that there are distinctions, and this is one distinction in which we think the English practice is not appropriate for the financial business of Canada.

In England, also, there is this marked difference, that there is no control over the individual broker or dealer who sells securities. It is all done, in a dignified way through a public issue by a banking house, through newspapers, and subscriptions made to that banking house, or else handled through the customer going to his firm of brokers.

Hon. Mr. TESSIER: There is no convassing from door to door?

Mr. LONG: No, sir. Here we cannot do away with that personal canvas. It would be an unthinkable thing, but we do meet it by a control which I have mentioned. That control has never been thought of in England and is not in existence there.

That is as short a summary as I can make here of our suggestions that these prospectus sections be eliminated. I would urge the committee to eliminate these prospectus sections entirely, leaving, if you thought fit, the requirement that the company should file with the department a statement in lieu of prospectus which will give Mr. Mulvey and the public, through access to public documents, information in regard to each company that he incorporates and which carries on business here. But don't burden the companies and the underwriters with the absolutely impossible situation of including in every letter, in every advertisement which goes to a newspaper, the prospectus information in these different sub-heads, and which would run to many, many pages. This cannot reasonably and honestly be lived up to.

A repercussion of the prospectus sections is found in Section 18 which provides that no allotment of shares and no allotment of debentures can be made until a prospectus or statement in lieu of prospectus has been filed with the Secretary of State. That, in theory, is doubtless to protect the investor so there will be put on public record this information before stock can be allotted. They would have the same protection in Section 28 of the Companies Act, which requires that the company shall have ten per cent of its capital subscribed before it can commence business. This is apart from the bill, except where I tie it into Section 18. But the effect of these requirements in practical business is this: They give little, if any—no protection, to the investor, and they create a condition precedent. A company must comply with the condition of filing a prospectus or statement in lieu. It must comply with the condition that ten per cent of its capital is subscribed before it can legally exercise its corporate powers. What you find is this: many companies from neglect, from carelessness, from oversight fail to live up to these conditions precedent, and then what happens? All future business of the company, all future allotments of stocks, all acts, are subject to question. So that, instead of protecting the public there

the reverse effect—and this is something that any lawyer who does much of this company business will tell you—often they meet most embarrassing questions. For example a company issues debentures, or sells shares, and the public buys them, and on liquidation or some question of company powers, the whole thing is in effect a nullity. Instead of protecting the public you will find the public injured in many cases, and there are decisions in our courts of debenture issues being invalidated where there has been no prospectus filed. The investor has invested money in good faith, and it is through non-compliance with this statutory condition precedent, which, I submit, has no practical value, that his securities are practically useless.

That is, shortly, the objections which we submit from the practical and from the legal point of view to this general principal in sections 15 to 18 dealing with prospectuses.

Another item I submit to the attention of the committee is section 20 of the Bill which enacts sections 56A to 56D. We are particularly interested in section 56C. It, in effect, provides that a company may issue preference shares which are at the option of the company liable to be redeemed provided no shares shall be redeemed except out of profits otherwise available for dividends or out of proceeds of a fresh issue. This is practically a verbatim copy of the Act of 1928 passed in England, and the reason for passing the Act in England was that up to 1928 there had been no such thing as a redeemable preference stock where the stock could be redeemed at the option of the company. If you wished to redeem any of your shares you had to go through a rather lengthy or cumbersome procedure of reducing your capital. It was felt, apparently, by the committee who had charge of making the recommendation to Parliament in England for an amendment of the Companies Act that redeemable preference stock, redeemable at the option of the company, was a desirable power to insert in their statute.

I will read a few sentences from a pamphlet that was prepared by a very eminent English lawyer who was a member of the committee. He is referring to its counterpart in the English Act of section 56C:—

> "By section 18 companies are given the right to issue redeemable preference shares, but this right is so hedged around with restrictions that it may not prove to be of much use in practice."

In other words, that member of the committee, who is a lawyer who has probably as wide an experience as anyone else in London in corporation matters, indicates that he feels this section will be of little practical use in England. In Canada we have redeemable preference shares not only under the Dominion Act but under the Provincial Acts. In England, the reason for the lack of redeemable preference stock was their preference for financing through debentures and debentures stock. We haven't followed that so much here, because debentures and debenture stocks carry a fixed charge for interest. Preference stock, carrying fixed dividends, does not impose a burden on the company unless there are profits to pay dividends. So that Canada, again, has a practice which is different from that in England; and we have always felt that we have the power to pay off preference stock out of any available funds which the company may have for such purposes, but it would be a very serious thing in practical business if this right to redeem were limited as mentioned in this section. Investment bankers tell me, and I have a member of A. E. Ames & Company here to confirm this, that you will very frequently find a company with a surplus of liquid funds which it does not need in carrying on its business. They may arise through a thousand different causes. A company may have sold a capital asset; it may have three or four businesses and may have disposed of one; it may have lost a piece of property through fire and does not wish to rebuild. Here is free cash not required to run the business, and properly

used for redeeming a preference stock on which a heavy dividend rate is payable. If you adopt this English practice of saying a company can only pay out of earnings which they have accumulated, then you hamper the freedom of the company's management in doing its best for itself and its shareholders and everybody else interested in it; and we earnestly submit that instead of adopting this new and questionable departure in England, as admitted by this member of the committee, you allow us to remain as we are under an Act which, speaking from the point of view of the people I represent and the legal standpoint, has workd out satisfactorily. I have never heard that Mr. Mulvey had had any criticism of the way it has worked out, or objection taken by shareholders or creditors to the practical redemption of capital stock preference shares under the existing provisions of the statute. But to tie it down in the way this is proposed to do would simply be to throw out of alignment and to put obstacles in the way of a very common and satisfactory form of financing which has obtained in Canada for years. We earnestly suggest that it be not adopted.

There are some other special clauses in the section that I will not attempt to take any time with. I might mention as a matter of record subsection (*c*) of 56C which provides that where shares are redeemed out of profits there shall be a transfer of a like amount to what they call a capital redemption reserve fund which must be kept as a capital asset. In effect, what the company has to do is this: You have your accumulated surplus profits and you use them to redeem your preference stock. You reduce your liability on capital, say, by a million dollars by taking a million dollars off surplus profits, and you have to put back and crystallize into capital reserve fund another million dollars. It would seem, if you want to act under this statute, you have got to practically tie up two dollars for each one you get rid of—a perfectly impractical situation, and a very obvious example after the comment I have read concerning England, that they do not think this section will be of much practical use.

Another item that we would question is the provision in section 30 of the bill which enacts a new section 119A dealing with the accounts which a company is required to keep. The point of interest is subsection 4 on page 24 of the bill, where the directors are required to make out and lay before the company a balance sheet with the report by the directors. There is no objection that far. But the next point is the report by the directors with respect to the state of the company's finances; the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, they think should be carried to the reserve. That would seem to indicate that shareholders should have some control, if it means anything, over the finances of the company in relation to dividends and in relation to reserves. The two are practically complimentary. At the present time under our Act, it is specifically provided that the affairs of the company, being under the control of the directors, they are allowed to deal with matters of dividends. Dividends, as you know, in a great many companies are declared half-yearly or quarterly. Whether they should or should not be declared is a matter for the directors, and they make up from the accounts how much accumulated profits they want to give to the shareholders, and the responsibility rests entirely on them. The shareholders have never, up to date, had anything to say with dividends or the distribution of the company's funds in that way. But, here, this section makes the directors say what they recommend as dividends. Inferentially one would think that that would require some act by the shareholders. There is no object in having the shareholders comment on them. If they think the directors have not been wise, it is a simple matter to have a new board of directors elected. The same applies to the general reserve account. This is another case where you have a similar statutory provision in England; but I am told that in England the dividend system is rather different in practice from ours—the directors follow

the practice of declaring what they term an interim dividend, if they want to declare one during the course of the fiscal year, they come before the shareholders at the annual meeting and say that they have paid so much in interim dividends and propose a final dividend, and the shareholders are consulted in that way. We do not have any such thing as that. This requirement that the shareholders have something to say about it would be quite at variance with the practice that the regular preference dividends, if there is something to be paid, almost automatically must go to the shareholders.

These are the matters of principle which we respectfully submit to the committee. The matter of drafting is not an item which I would attempt to suggest to this committee. It would not be possible to draft anything until we know what their views are on the suggestions made. These are matters of vital importance, and I cannot stress them too much. Canada has become more and more an investing country by herself, and the business of selling sound securities in Canada should not be fettered. Perhaps I might refer to one or two clauses.

Hon. Mr. WEBSTER: What was the practice in England in regard to the last clause you were dealing with, and why does that obtain in England now?—

Mr. LONG: I don't know, sir. It is one of those things that has probably run for years and years; but they have a different system.

Hon. Mr. WEBSTER: I refer to the point of calling a meeting of the shareholders for the purposes of declaring dividends.

Mr. LONG: I don't know that that meeting actually declares dividends. What happens is that the directors say, "Here is our statement. We may have declared some dividends, but we think that if you shareholders are satisfied, we will declare a dividend of, say, eight per cent for the past fiscal year."

Now, that is the responsibility placed by statute upon the directors. There is no control by shareholders over dividends hinted at anywhere except inferentially in this one clause of the bill, and that inference should not remain. If the statute does remain, I do not know what the effect would be. If the directors say, "We have declared a dividend and we recommend you to approve of it," and if the shareholders do not approve of it no result can accrue because on the declaration of the dividend there is an immediate legal obligation on the company to pay to each shareholder the amount declared. I fancy, also, in England, you will find more interest among the shareholders in the matter of attending meetings than is found in Canada. The average annual meeting of the average company in Canada is usually very lightly attended; it is made a purely formal matter. The only time they have a good attendance is when there is likely to be a fight.

Just apropos of this point I would like to stress as much as possible that legitimate financing—which represents—I do not know whether it would be out of the way to say over 90 per cent of the money that is put into securities in Canada—should not be hampered. I would point out two items in the report of the Company Law Amendment Committee in England. This was a very outstanding committee of financial men and lawyers in England whose report resulted in the 1928 amendment:—

> "The evidence satisfies us that the great majority of limited companies, both public and private, are honestly and conscientiously managed."

I do not think that we need feel that that would not apply as much to Canada as to Great Britain.

> "Many of the suggestions made to us show that the idea that fraud and lesser malpractices can be stopped by the simple expedient of a prohibition in an Act of Parliament dies hard."

Prohibition by Act of Parliament does not accomplish either in financing or other things the effect which modern and energetic promoters hope.

Hon. Mr. LAIRD: What prohibition do you refer to?

Mr. LONG: It is a matter of opinion:—

> "It appears to us as a matter of general principle, most undesirable, in order to defeat an occasional wrongdoer to impose restrictions which would seriously hamper the activities of honest men and would inevitably react upon the commerce and prosperity of the country."

Hon. Mr. McMEANS: Is that an English matter?

Mr. LONG: This is the Companies Law Amendment report of 1925-26. It is from a memorandum addressed to the President of the Board of Trade, and I have taken these two items as showing the English feeling. What I am trying to submit here is that we must recognize the burden contained in the prospectus and the preference stock—particularly the prospectus; and that in order to catch the occasional wrongdoer they have made the burden a matter of extremely serious consequence to the legitimate financial business of the country.

Hon. Mr. BEIQUE: Are we to understand that the objections are restricted to the amendments, or are they extending to the provisions of the Act as it stands?

Mr. LONG: I might say I would like to extend them to the circumstances as they now exist *in toto;* and my reason is that the investors are protected by all the provincial laws, and the prospectus sections are an additional burden on the companies, that add nothing to the provinces, and their control is in regard to civil rights, which the provinces have already protected.

Hon. Mr. BEIQUE: I am inclined to think from your argument that you think the public interest would be better safeguarded by having an official in the department of the Secretary of State who would be the guardian, so to speak, of the interest of the public, and would have the power to demand such information as he would desire, and who could make regulations from time to time governing the companies, which would be flexible and could be amended as required, instead of embodying these matters in statutes? What I have in mind is an officer in that department who would act as Mr. Finlayson acts in the Insurance Department—the Finance Department. He is the advisor of the department on the rules that are in force.

Mr. LONG: That is, I take it, very similar to what we find in Ontario, as the typical case. In Ontario, when a company wishes to sell its securities it files with the Provincial Secretary a form containing a lot of information. Everybody who sells—and I think this is the only way that you could satisfactorily work out the control—must be licensed and registered by the Attorney General's department. The same thing applies to insurance agents. Ontario put through another bill at the session which recently closed, making the same act apply to real estate agents, feeling that control over these persons is for the protection of the public. Now, the combined result is that the Attorney General can look at this information in time and he can say, "You had better not sell until I am satisfied that what you are selling is all right." He can demand further information. If he feels that it is fraudulent he can say, "No, you must not sell this. If you do your license will be revoked, and there is a very heavy penalty." Now, it would seem an unnecessary duplication almost to try to have anything similar to that in Ottawa, because the enforcement of it really depends on provincial procedure.

Hon. Mr. BEIQUE: But can the authority in the province of Ontario deal with investors in Quebec, for instance? Would that apply?

Mr. LONG: No. Their jurisdiction would only apply to the individual who, in Ontario, was selling securities; and, of course, the weakness which can be found in the provincial case is that the province has no control over the mails, and there may be circulars going through the mails.

Hon. Mr. BEIQUE: My last question is: You take exception to the provision of the Act prohibiting a company commencing business before ten per cent has been paid up?

Mr. LONG: I would say "yes," Senator.

Hon. Mr. BEIQUE: I am rather surprised. I appreciate your objection, but it can easily be met in this way: that the provision would have the effect merely of making the officers of the company liable to a fine; but it could be recommended that it would not nullify the operations of parties.

Mr. LONG: I am absolutely in accord with you. The matter which I may describe as a terror to lawyers is where we find an Act of Parliament where non-compliance with it creates a nullity.

Hon. Mr. BEIQUE: Your objection is sound. It can be removed, keeping the safeguard in the fact that the company should not be allowed to commence business without a certain amount for the protection of the public.

Hon. Mr. WEBSTER: Do you feel that the public is sufficiently protected at the present time without the addition of these amendments?

Mr. LONG: Absolutely. Experience has shown it, and evidence could be piled up to demonstrate it. I am quite positive.

Hon. Mr. TESSIER: You do not want this bill at all; you are satisfied?

Mr. LONG: There are a lot of very excellent provisions in this bill indeed.

Hon. Mr. WEBSTER: You refer to the amendments?

Mr. LONG: I am referring to the sections other than the propectus sections.

Hon. Mr. McMEANS: I understand you to say you object to the old provisions of the Act?

Mr. LONG: The old provisions in the Act were not lived up to. For instance, to give them their full and strict meaning, I think the old Act was capable of the construction that where a company itself sold its shares, every offering it made had to contain a prospectus, and had to contain all the information. Now, very few companies go direct to the public, and their securities are usually sold in public matters by banking houses. The section did not apply to them.

Hon. Mr. McMEANS: Your answer is that you do object to the old provisions?

Mr. LONG: Yes.

Hon. Mr. McMEANS: So, there would be no provision at all in the Act where there would be either a prospectus or a statement filed?

Mr. LONG: Quite. Now, may I say there that I see no objection. One would be willing and quite glad to put on record with Mr. Mulvey certain information concerning each company that he incorporates to show that the company has commenced business. That is a public document, and it may be that the Secretary of State likes to know what his children have developed into; in Ontario they simply cut out of their Companies Act completely everything that dealt with prospectuses, and their prospectus sections, up to the time of the amendment last year, were practically the same as in the existing Dominion Act. They have substituted this control over salesmen and the filing with the department of certain information, and they have found that it has worked out excellently; and I can speak for the members of the Investment Bankers' Association, who have co-operated with the Attorney General's department, and various other public bodies such as the Board of Trade and business bureaux.

They have co-operated with the Attorney General's department, and they have cleaned up a lot of very unsatisfactory types of individuals, and they have taken very active steps in this direction, and the year's experience has shown good results.

Hon. Mr. McMEANS: What protection would the public have? I understand from what you have said that you are opposing the Act incorporating companies. If there is no provision made for filing a statement or a prospectus, does the public have any security at all?

Mr. LONG: Do you mean when that company's shares are offered to you as an investor?

Hon. Mr. McMEANS: No; the formation of the company all the way through.

Mr. LONG: The prospectus has nothing to do with the formation of the company except that it is necessary to file a statement in lieu with the Secretary of State, and I am not quarrelling with that, although I do not think it is of very much value. Leave it in if you want to, but don't require us to supply this enormous amount of information every time a man invests his money.

From the point of view of the association I represent, we are not subject to that under the existing Act, because the existing Act applies to the companies selling their own securities, and not to dealers selling securities they own, as you have seen in advertisements, "We own and offer."

Hon. Mr. DANDURAND: If it is good to ask the company to file a statement, and the company runs away from that obligation by having a substitute or an agent who declares, "We own and offer," should not the party which owns and offers make a similar statement inasmuch as all the securities would go into the hands of the public?

Mr. LONG: That is a conclusion that might be drawn if you start off with the premise that it is necessary to have a statutory form given to a prospective investor. If you simply file that statement you have the information on public record. You have a standard prospectus form for every company—a pulp and paper company, a boot and shoe company, or any other company—but it requires almost superhuman skill to prepare a standard form that will give a man independent information on every one of these different businesses upon which he can pass judgment as to whether the securities are sound or not.

Hon. Mr. TESSIER: The investor wants to know what he is buying. Sometimes he does not know what he is buying.

Mr. LONG: Now the investor in Ontario, in Manitoba, in Alberta and in Saskatchewan and in Quebec is protected fully under these provincial laws.

Hon. Mr. BEAUBIEN: But in Quebec they have to file a prospectus.

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: Do I understand that they haven't got that obligation in Ontario at all now?

Mr. LONG: Yes; they have an obligation, like Quebec, to file the information; not quite as elaborate as Quebec.

Hon. Mr. McMEANS: Only applying to provincial companies?

Mr. LONG: No; to every company.

Hon. Mr. BEAUBIEN: Every company selling in Ontario.

Mr. LONG: Every company whose securities are sold in Ontario or who establishes a business there, thereby putting them under Ontario jurisdiction.

Hon. Mr. McMEANS: We would have very grave doubts about whether a dominion company complying with the Dominion Act—whether the provincial government would have the right to impose conditions.

Hon. Mr. WEBSTER: It has been enforced. The province of Quebec has had to investigate Dominion companies.

Mr. LONG: The provinces have got around that, and have control over Dominion companies now through the control over the individual who sells dominion securities.

Hon. Mr. BEAUBIEN: Now what do you think of the suggestion of forcing the companies who incorporate here practically to fulfil the same obligations as in the provinces. You have to file a statement in Quebec if you want to sell. That document, standardized, so to speak, would have to be registered here? I understand you object to burdensome obligations so you want to simplify them as much as you can?

Mr. LONG: Yes. As far as filing goes, Senator Beaubien, one would have no objection to filing, if you could get a standardized return. Now, Quebec has got an enormous amount of information required. Ontario has something different. Manitoba and Saskatchewan have their own forms. We are different from Great Britain; there is the question of jurisdiction. We have a number of jurisdictions. We do not mind that question of filing information with the government department. That is not what we are quarrelling about; it is the impossible obligation of giving that volume of information in the form of a prospectus in every advertisement, every circular, every letter, even every telegram which contained an offer to sell shares or securities. How would you like to give all the material that you file in Quebec every time you approach a man and ask him to buy shares of stock or put an advertisement in the paper or write a potential investor an offering letter?

Hon. Mr. WEBSTER: It is not the method of filing this prospectus you object to?

Mr. LONG: No. It is the condition requiring financial houses to give that prospectus every time anybody is invited by personal canvas or by a letter or telegram to buy shares or securities.

Hon. Mr. MCLENNAN: I think I have seen a short prospectus in an English paper.

Mr. LONG: The English Act has not yet been brought into force; what they call an abridged prospectus can still be used.

Hon. Mr. BEIQUE: As far as I am concerned, I should like very much to have your suggestion as to the prospectus which should be required.

Mr. LONG: Do you mean for me to say right now, sir? That is a little difficult. I should like to submit it .

Hon. Mr. BEIQUE: Put it in writing.

Hon. Mr. BEAUBIEN: Mr. Long, I did not quite catch your objection to section 56. You say that according to section (*a*) preferred shares cannot be redeemed except out of profits or out of the proceeds of a new issue.

Mr. LONG: That is 56 (*c*), sir.

Hon. Mr. BEAUBIEN: You give the example of some bit of property forming part of the assets of the company being sold. The directors do not know what to do with the money, and they say it would be a good thing to buy back a portion of the preferred issue.

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: That would be a reduction of capital.

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: Surely the company would have the right to avail themselves of the provisions of the law and reduce their capital?

Mr. LONG: Yes, sir.

Hon. Mr. BEAUBIEN: Therefore this section only applies when through a process of that kind the capital is not reduced. And don't you think, if that is the case, it is quite right that the law should say—

Mr. LONG: No.

Hon. Mr. BEAUBIEN: —that you shall not reduce your capital—because that is what it means—you shall not buy back part of your preferred issue execept out of profits or out a new issue.

Mr. LONG: No, I would submit not, sir, because, as you know, a very common form of financing now is the preferred stock; for instance, with a sinking fund, where each year the company buys back some of its stock. That need not be done out of accumulated profit. We have always been able to redeem stock that way, and if you did not want to do that, every time you wanted to redeem a few shares you would have to go through this rather difficult procedure which mean an application to the Secretary of State, a meeting of the shareholders, and supplementary letters. Is there any objection to following what is already the law, that your letters patent say the stock can be redeemed under certain conditions?

Hon. Mr. WEBSTER: In whole or in part.

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: But you cannot do that out of your own capital without reducing your capital.

Mr. LONG: Your capital is reduced, of course, but you have that anticipatory reduction in the instrument that creates the company.

Hon. Mr. WEBSTER: Some companies have the right to reduce their preferred stock without calling a meeting of the shareholders.

Mr. LONG: Practically all. It is a very common form.

G. S. STAIRS, K.C., apeared before the Committee.

He said: Mr. Chairman and gentlemen, I am not here representing anybody in particular, I am simply here as a lawyer practicing a good deal under this Act, in the hope that I may be of assistance in improving it.

I want to say first of all, that taking the Bill generally and throughout, in my humble opinion it contains a great many very valuable and useful improvements to the Act. I do not propose to go over the ground that has been covered by my learned friend Mr. Long, but I should like to associate myself generally with what he has said about the principle of the prospectus amendments, and the principle of the amendments in regard to the redemption of preferred stock. I might say, just by way of emphasis, without labouring it, that the line we wish to draw is the line between the sale of securities—shares or bonds—by owners of them, and the offering for sale of shares or bonds by the company for its own account.

The sale of shares and bonds by owners is a matter of ordinary commercial business, and I agree with Mr. Long that it can very well be left to be regulated by the provincial laws, the ordinary laws regulating property and civil rights and commerce generally. I do not think it necessary that this Parliament should attempt to make the provisions of the Act follow the shares right through to their destination, except as it is necessary in the constitution and so on of the shares themselves. But with regard to the offering by a company of its own shares or its own debentures to the public, that, in my experience, is a very unusual thing in Canadian practice. I have been in practice for some years and I have never had but one case under the Dominion Act of a prospectus, a real prospectus, that had to be published by a company publicly offering its

own shares; and it was such an unusual thing in my practice and in the experience of the people dealing with it that it gave a great deal of trouble. We eventually got something that we thought and hoped would conform to the very rigorous requirements of the Act, and which at the same time was practicable, and we had it signed and filed, and the people that were offering the stock used it as a basis of their offers. That has happened only once in my experience, so I think you may take it, gentlemen, that the situation you have to deal with in this country is the sale of shares and other securities of companies by people who have taken them firm, as we say, *i.e.* who have bought them and are selling for their own account.

I also might offer this suggestion. It seems to me that if you examine the prospectus requirements, it is a mistake to think that they are framed with the idea of enabling a man to say whether a security is sound or not by reading the prospectus. I think the real intention to be gathered from the prospectus sections and the jurisprudence, the English jurisprudence, is that they are intended simply to disclose promoters, interests and profits and things of that kind. In practice in this country, as Mr. Long has pointed out, it is practically impossible in the way in which we do business that there should be a strict compliance with the requirements, for that would necessitate embodying all the information in every circular or letter given to anybody. I do not object so much to the necessity of filing information. Those of us who are interested in the Act, particularly those who practise a good deal in advising the investment banking houses, might say that our main objection is to these provisions of the Bill. I think that the prospectus provisions of the Act as it stands could, from the point of view of the companies, be improved, and I would suggest a slight revision,—probably Mr. Long will look after this when he is preparing the amendment which he has been asked to submit—so as to show clearly that they do not apply to persons offering for their own account and not for the account of the company.

I agree too with Mr. Long on the redemption of preferred stock. For a good many years companies have been free to redeem preferred stock in accordance with whatever conditions they put in it when it was issued, though that operated from time to time as a reduction of capital not carried out under the other sections of the Act. It is a reduction of capital which is contemplated in the conditions of the stock when issued, and any person who extended credit to a company simply because he knew it had an authorized amount of stock would be a very imprudent person. I think this idea of prohibiting reduction of capital in the interest of creditors and so on is rather a shibboleth. Nobody ought to extend credit to a company without looking at its balance sheet and examining into the condition of the company, and nobody can get any such information on the actual condition of a company in any possible way from what is at present on file in public departments, or anything that might be required to be filed there.

I would like the indulgence of the Committee just for a few moments. I have one or two points that I should like to make. There is nothing that involves any very serious principle such as we have already heard, but there are one or two little points that I should like to mention. The simplest way is to take the sections of the Bill as they come. Section 3 of the Bill repeals and re-enacts section 5 of the Act, which defines the power of the Secretary of State, and the limitation of that power in regard to what companies may be incorporated. The Act has been improved, or will be improved, if the suggestion is adopted that these words "within the meaning of the Insurance Act," and "within the meaning of the Loan Companies Act" are added. I would like to suggest that the exception in regard to the construction and working of railways or telegraph or telephone lines be restricted by the insertion of the words "within Canada,' after the words "telephone lines" in the 10th line of subsection one. There is a great deal of Canadian capital invested abroad, especially in South American and Central

American countries, and particularly in public utilities enterprises, and as a rule it is found that the best vehicle for that is a British company. Naturally Canadians would incorporate a Canadian company. If you are going into one of those Latin countries it is well to have the protection of the British flag, and it is embarrassing, sometimes, if you want to take over an enterprise which may include a tramway or telephone line, not to be able to get a charter from the Secretary of State. Personally I can see no reason why Parliament should not permit companies to be incorporated to operate outside of Canada, where the Railway Act does not apply, only subject to whatever local laws may be in force in the place where they are to carry on business.

Section 6 of the Bill deals with the form of capitalization through no-par-value shares, and the Bill embodies a number of changes. I would like to submit another change which involves the substitution of another form for subsection 4. Subsection 4 of section 9, as included in section 6 of the Bill, defines the method by which the consideration for the no-par-value shares to be issued is to be fixed. Consistently with the principle upon which the consideration for the issue of par value shares is fixed—subject to the limitation of the shares themselves, that they cannot be issued at a discount or under par—I submit that no-par-value shares should in normal cases be issued for consideration as fixed by the directors, and the section should be turned around and be made to read:

> In the absence of other provisions in that behalf in the letters patent, supplementary letters patent or by-laws of the company, the issue and allotment of shares without nominal or par value authorized by this section may be made from time to time for such consideration as may be fixed by the Board of Directors of the company.

With your permission I will hand to the Clerk a memorandum of the form of that amendment.

There is another slight change in the phraseology, just to correct what I think is probably an accidental change in sub-section 6 of the same section. That section deals with the amount of capital for the purpose of the clauses regarding the declaration of the dividends, so as to establish what capital a company may have in order to fix the correct amount of its operating capital. It begins on page 2, referring to section 9 of the principal Act. The Bill would provide that the amount of capital should be the amount received for the no-par-value shares issued and the amount received in consideration for all other shares. The par-value shares might conceivably be issued at a premium. If this is allowed to stand it would have the effect of capitalizing the premium, and would establish a different rule when both par-value shares and no-par-value shares are issued from the rule that applies when there are only par-value shares. I think it would be a mistake to have that different rule in the Act. I have got an amendment to correct that:—

> For subsection (6) of section 9 of the principal Act, as repealed and substituted by section 6 of the Bill, substitute the following:—
>
> (6) The amount of capital with which the company shall carry on business shall not be less than the aggregate amount of the consideration for the issue and allotment of the shares without nominal or par value from time to time outstanding, and in addition thereto an amount equal to the total nominal amount of all other issued and outstanding shares of the capital stock of the company issued as fully paid and the total amount for the time being paid up on such other shares of the capital stock of the company as are issued and outstanding otherwise than fully paid.

With reference to those sections generally, it has been suggested to the department, to Mr. Mulvey, by a number of people interested in the Act, that

there should be a further revision to enable the consideration for the issue of no-par-value stock to be fixed in such a way as would enable a company, particularly a reorganized company, to carry forward a profit and loss surplus, if such existed in the original company. I have not an amendment ready; perhaps some of my friends may have. That is very desirable for business reasons, and I think the Act would be very much improved if something of that kind could be provided.

Hon. Mr. BEIQUE: Could you give us the amendment?

Mr. STAIRS: Yes, sir, I think we could undertake to do that.

Hon. Mr. WEBSTER: Would there not be a conflict with the provincial legislation? In Quebec par-value stock is issued at $5 a share. You suggest a different method, if I understand you.

Mr. STAIRS: No, the province of Quebec simply says that you must state the amount of capital with which you will carry on business, which shall be $5 a share or a multiple of $5 a share. That is the old provision that used to be in the Dominion Act. Now, that does not fix the consideration for which you may issue your shares. You may have 100,000 shares of no-par-value and issue them to a man in consideration of the transfer of a company worth $10,000,000. But under the Quebec Act you may have a statement in your letters patent that you would carry on business with $500,000 capital. I do not hold up the Quebec Act as a scientific and good model in regard to the provisions as to no-par-value shares.

Hon. Mr. WEBSTER: It has been very satisfactory so far.

Mr. STAIRS: It may have been, but I think if you will examine them you will find they are not very scientific. Perhaps this would be a convenient place to mention a verbal correction in section 27 of the Bill so that it will not escape notice. It inserts new clause 108A, and in the fourth line I think the word "passed" is a typographical error for the word "cast", and it reads "sanctioned by at least two-thirds of the votes passed at a special general meeting." It is a mere matter of words. Everywhere throughout the Act the word "cast" is used, and I think this section should read "cast" uniformly with the other provisions of the principal Act. Then I think in subsection 2 there is a similar improvement necessary. Here it talks of the votes of two-thirds of the shareholders being "cast", and I think it should refer to two-thirds of the votes.

My only other suggestion is for an amendment in clauses 29 and 30 of the Bill. Clause 29 provides for the insertion of a new section enabling a company to establish branch registers at such times and subject to such conditions as the Secretary of State may decide. That was probably intended to mean at such places, but I do not know. However, I think there should be a more radical amendment. I think it would be not wise that this matter of transfers should be left to be dealt with in the department. I think it would be an embarrassment rather than a help. My suggestions are embodied in a draft suggestion for the amendment of clauses 29 and 30. This involves the transfer of what is now in section 119, describing how books shall be open for inspection, to a position as subsection 2 of section 117, immediately after the books to which it really refers; then repealing sections 118 and 119, and really consolidating the old section 118 and the new section 117A (section 29 of the Bill) into a new section 118 of the Act dealing comprehensively both with that principal register and with branch share registers.

Then I suggest that 119A as in the Bill have a new number, as I have set free the old number of the Bill by my suggestion, and it enables 119A to be called 119. That is the whole suggestion.

29. The principal Act is hereby amended by adding to Section 117 the following subsection:—

(2) Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the chief place of business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder, any of whom may make extracts therefrom.

30. Sections 118 and 119 of the principal Act are hereby repealed and the following substituted therefor:—

118. A register of transfers shall be provided in which shall be entered the particulars of every transfer of shares in the capital of the company.

(2) The register of transfers shall be kept by the secretary or by such other officer or officers as may be specially charged with that duty or by such other agent or agents as may from time to time be appointed for the purpose by the company.

(3) Unless otherwise provided in the letters patent or by-laws of the company, the register of transfers may be kept at the chief place of business of the company or at such other office or place as may from time to time be appointed by the directors, and one or more branch registers of transfers may be kept at such office or offices of the company or other place or places as may from time to time be appointed by the directors.

(4) Unless the register of transfers is kept at the chief place of business of the company a book or books shall be kept at such chief place of business of the company in which shall be entered a copy of the particulars of every transfer of shares in the capital of the company, but entry of the particulars of the transfer of shares in the capital of the company in a register or branch register of transfers kept elsewhere than at such chief place of business of the company shall for all purposes of this Part be a complete and valid transfer.

(5) Such books during reasonable business hours of every day except Sundays and holidays shall, at the places where they are respectively authorized by this section to be kept, be open for the inspection of shareholders and creditors of the company and their personal representatives and of any judgment creditor of a shareholder, any of whom may make extracts therefrom.

119. Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) The books of account shall be kept at the chief place of business of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company,

and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months. (Continue with balance of Section 119A as in Bill.)

I might just outline the gist of the suggestion. It is simply made on account of the almost universal practice, particularly in large companies, and always in the case of companies whose issues are listed, to have their shares transferred by transfer agents, and to have registrars. It is very desirable that that practice should be legalized. At present our law requires all share registers to be kept at the head office of the company, and I doubt very much whether there is one of the large companies operating in conformity with the Act.

Another thing is, it is absolutely necessary to have power to have more than one register, because the stock exchanges invariably require that it shall be possible to transfer shares in the same place at which the stock exchange is situated. In other words, if you have shares listed on the Montreal Exchange, you must have shares transferred in Montreal. Your company may have its head office in British Columbia, but it does not matter; you must have a transfer register in Montreal. The same thing applies to Toronto and New York, and probably London, too, although I am not sure that there is an absolute requirement in that regard.

Hon. Mr. McMEANS: Does it not go further than that? If you have branch transfer offices in the different provinces, and you happen to own some of the stock in the head office in Toronto, and there is no office in Winnipeg, you would have to pay double death duties.

Mr. STAIRS: Possibly so; you cannot absolutely prevent that; but so far as the situation of the stock is concerned, apart from the domicile of the owner, I think this will enable shares to be localized at one place. Some of the provinces apply the rule, *mobilia sequuntur personam*. In other words, they tax the property of a deceased person no matter where it may be; and in that case, if a man resides in British Columbia, and has shares in a Quebec company registered in Quebec, he will have to argue it with Quebec, and possibly there will be double taxation.

Hon. Mr. McMEANS: There would be a taxation in British Columbia, and another in Quebec.

Mr. STAIRS: We cannot prevent that.

Hon. Mr. McMEANS: If you had a transfer office in British Columbia he would only pay one death duty.

Mr. STAIRS: I think it is impossible to legislate in such a way as to imitate a bank. You can go this far, that you can provide means to enable a company to establish what registers the company must have, under all the exigencies of its business, and stock exchange requirements, and things like that. But I think it would be impracticable to provide that a Dominion company would have to maintain a share register in each province.

Hon. Mr. McMEANS: I quite agree.

Mr. STAIRS: I have considered the thing fairly carefully, and I did not want to trouble the Committee with much detail or argument about it, particularly with going into this succession duty question, which is a very complicated and troublesome one.

The CHAIRMAN: Have you these last amendments ready?

Mr. STAIRS: Yes, I have them ready, and that is all I want to develop. If any of you gentlemen want to ask me any questions I would be glad to answer them; otherwise I am through.

Hon. Mr. McMeans: I would like to ask you on one little matter. I understand you to say that it would be better to practically eliminate from the Act the prospectus and statement, and depend on the legislation of the different provinces for protection.

Mr. Stairs: Perhaps I did not make myself clear. I think it would be best to eliminate from the Act the requirements of the New Bill in so far as they require persons who sell shares commercially, for their own account, to offer prospectus and give all this information to prospective clients. But that is a very different thing from the situation where a company itself is offering its shares to the public as they do in England. There may be a case for leaving the prospectus requirement applicable, though I think there should be some amendment and slight improvements made in the sections themselves. That, again, is a different question from the filing question. There are three cases. One is the investment banker, who sells for his own account. He should not be asked to comply with those prospectus requirements at all; he should be left to be dealt with by the province.

Hon. Mr. Tessier: He should not be asked.

Mr. Stairs: He should not be asked; he should be left to be dealt with like a butcher or a baker.

Hon. Mr. Beaubien: He has paid out his own money.

Mr. Stairs: He has paid out his own money for his securities, and he sells them just as a man sells cheese, and I should leave the province to deal with him. The next case is the case of the company offering its own securities. Then we have another question—whether it is sufficient that they should file information, or whether they must also be required to deliver copies of the information filed to everybody to whom they offer the stock by public advertisement, incorporate it in full in the advertisement, or send a copy of this information filed with every letter, if they send a letter, or with every telegram they send.

Hon. Mr. McMeans: This applies to all companies?

Mr. Stairs: If the amendments are adopted it will require that every company which offers its own shares shall give everybody, or give the public, notice, with all the information that the prospectus section required.

Hon. Mr. Tessier: That is what they do generally.

Mr. Stairs: They never in this country do it.

Hon. Mr. Tessier: They announce their shares?

Mr. Stairs: But they never do it.

Hon. Mr. McLennan: Every morning there are announcements.

Mr. Stairs: Yes, but they do not give you a copy of their charter powers.

Hon. Mr. McLennan: But reputable houses will give it to you. As a protection for the investing public, particularly, you have the reputability of the security company.

Mr. Stairs: I think the respectability of the investment banking houses in Canada is the protection that the public now has. These prospectus requirements will not give you any protection against the unscrupulous fellow, and substantially I should say that the investment bankers' circular now contains really all the information that anybody can reasonably require, and a good deal more than the Act requires; but they omit some specific items that the Act does require.

Hon. Mr. McMeans: That is, what they pay for the property, and what they are offering it at?

Mr. Stairs: That is not made public, but no doubt if you or anyone else said, "I will not buy these shares unless you tell me what you did pay," they

will say, "Come down to our office, and we will show you." You can get the information if you take the trouble to go to Mr. Mulvey's office and look at the Company's statement in lieu of prospectus. There are two things; if you do not issue a prospectus which contains all the matter that the Act requires you must file with the Department similar information so that anybody who knows the Companies Act, and knows that this is required, can get the information by going to the Department, seeing the names and dates and particulars of every material contract, seeing the statement of the interest of directors, and all that sort of thing, and then simply going to the place where they are open for inspection, if he takes enough interest in it. If you are sitting at your desk and a man asks you to buy a bond or 15 or 20 bonds, you are not going to do that, but you may write to your agent at Ottawa, or come up to Ottawa if you are willing to take that trouble to get it; but it is all there if you want it.

Hon. Mr. McMEANS: You do not propose to alter that?

Mr. STAIRS: No, I would not advise dispensing with the filing requirements —with the requirement for filing information—but I would advise dispensing with information to be given to everybody broadcast, whether they want it or not.

Hon. Mr. BEAUBIEN: I understand, then, that when a company sends its shares to a banking house, you would pass that company over to the jurisdiction of the province?

Mr. STAIRS: That is practically what I said, subject to this provision, that I would still require that the information still be filed at Ottawa; that the sort of information that they now have to give would still require to be filed, to be available for reference if anybody needs it or wants it, or for the future, or something of that kind. I think it is far more useful to be able to look it up five years afterwards, though you will not get people looking it up as the basis of a purchase. You do occasionally want to look it up afterwards, however.

Hon. Mr. TESSIER: When you have lost your money?

Mr. STAIRS: When you have lost your money.

Hon. Mr. BEAUBIEN: Then the other company, selling directly to the public, would remain under Federal control?

Mr. STAIRS: Yes.

Hon. Mr. BEAUBIEN: What would you exact from them, then?

Mr. STAIRS: Simply to file it.

Hon. Mr. BEAUBIEN: They would do nothing else?

Mr. STAIRS: Nothing else.

Hon. Mr. BEAUBIEN: They could offer their shares without any further information than the banking house would give; is that right?

Mr. STAIRS: Yes, so I suggest possibly revising the thing a little bit, and making it simpler, and easier to comply with.

Hon. Mr. TESSIER: There ought to be some way whereby the public would know that they could get information through the Secretary of State.

Hon. Mr. McMEANS: What I want to get at is that the legislation in effect in the different provinces is no protection to the public. This is a Dominion Act. Now, all they can do is to pass legislation to the effect that anybody selling these shares shall take out a license.

Mr. STAIRS: I would like to submit that, in practice, the provincial legislation such as was described by Mr. Long as in force in Ontario and the western provinces, and such as was introduced by Premier Taschereau in Quebec last session, but not passed—though I think it very soon will be—is a protection, for the simple reason that in the commercial companies organized under the

Dominion Act it is so unusual to have a public offering by the company that I think we can really afford to disregard it. Of course that is not true in the case of insurance companies, banks, and other institutions, but in all my experience I have only known one case of a public offering by a company on a prospectus.

Hon. Mr. BEAUBIEN: Would not your suggestion make those companies that would remain under the Federal control really freer than those that would be passed over to the provincial control?

Mr. STAIRS: Well, as I say, practically I think they would.

Hon. Mr. BEAUBIEN: It is the reverse operation to-day, so much so that no company sells its own shares; it is not practical.

Mr. STAIRS: It is not practical. Of course I do not think they ever will sell their own shares. Under our method of doing business no company can afford to establish a sales department for shares. It is a different thing with the underwriting system in England, where all you have to do is to go to an underwriting company and say, "We want to offer so much; you underwrite it," and they do it by advertising, and the money comes in practically to the company's banker, and the underwriter gets an overriding commission of two, three, four or five points, and the company gets its money. It is a very different thing from attempting to peddle.

Hon. Mr. TESSIER: How about new shares?

Mr. STAIRS: That is the way they do it. It is a very different thing to peddle $5,000,000 of shares all over this country. We cannot do it, and we go to specialists such as our friend Ames & Co. or anybody at all, and say, "Here, you have an organization; you buy these shares, and pay for them." They arrange a bank credit, and do pay for them, and then they sell them.

Hon. Mr. McMEANS: Is the practice that they are always sold to the investment houses?

Mr. STAIRS: Almost always. In the big commercial companies, certainly. With some of those newer companies they sell them to the public or take them on an agency basis.

The CHAIRMAN: Will you please file your proposed amendments with the clerk.

Mr. FRANK B. COMMON, K.C., appeared before the Committee, and said:—

I represent the eastern division of the Canadian Investment Bankers' Association, and I am also putting forward the views of my firm, Messrs. Brown, Montgomery & McMichael, Montreal, as suggested by our experience in dealing with the incorporation of companies as to what we think the effect of these amendments would be. I wish, in the first place, to concur generally in what has been said by my confreres, Mr. Long and Mr. Stairs. I am not going to traverse this ground again and repeat what has already been said. I wish, however, to emphasize one point dealt with briefly by Mr. Stairs, and would suggest that we insert an amendment authorizing the issue of no-par-value shares at a premium; with two objects—one, of which was mentioned by Mr. Stairs. When an old company has been operating for many years with a long-continued dividend payment policy, it may, for varying circumstances, find it necessary to obtain a new charter and go under a new legal entity, as it were. But it is the same institution, and it is the same earnings and the same funds that are going to be available for the payment of dividends, and it is very undesirable that that dividend policy should have to be interrupted. It might be that that reorganization might be completed within ten days before the next quarterly dividend might become due. In that case the new company might

not have been able in that ten days to earn sufficient profit to pay the dividend for the whole quarter. This is one of the reasons why I think there should be inserted a clause permitting a premium on no-par-value shares, which premium would be available for continuing the dividend payment policy.

Another reason is that under present practice, where so-called investment trusts—I would prefer to call them investment companies—are being formed, the investment bankers who offer those securities desire that these companies should be able validly to declare a dividend on the preferred stock at the end of the first quarter should there be available sufficient moneys to do so. They in many cases ask whether it is legal under Canadian law to pay a premium on account of no-par-value shares, in order that that premium may be available to pay the first dividend on the preferred. We have been compelled to advise them that it is doubtful. In some cases they have resorted to subterfuge, which is undesirable, in order to do this, and I think that it is our duty to make the law specific on that point.

Hon. Mr. BEIQUE: I fail to see anything in the Act which would prevent any company from issuing stock of no par value.

Mr. COMMON: There is a provision that the amount of capital with which a company shall carry on business shall not be less than the aggregate amount of the consideration for the issue and allotment of shares without par value, plus an amount equal to the total par value of all other issued and outstanding shares of the capital stock of the company.

Hon. Mr. BEIQUE: By the amendment?

Mr. COMMON: Exactly. My second suggestion would be that there be a specific authorization under the Act to permit of the declaration of stock dividends. Stock dividends are a recognized feature of corporate operation and capital readjustment. Our Act at the present time makes no reference to stock dividends. It has been the practice of the Department to permit of the insertion in letters patent of express permission to pay stock dividends. However, if we apply the principle that the Department may not insert in the letters patent anything that is not permitted by the Act, there remains the legal question as to whether the Act as drafted legally authorizes that insert. In order to clear up doubt on this question, I would suggest that there be express authority granted by the Act to pay stock dividends. When we are dealing with large sums of money and large industrial units, as we are at the present time, we cannot afford to have questions of this kind in an uncertain condition.

I may say that in conferring—this is going to bring me into another point—in conferring with international counsel, in the realm of international finance, counsel in London, in New York, and in various European countries, we find that on inquiring where they will incorporate certain companies they inquire as to what is necessary to be done in various countries to bring them under the law. On this point we have to give an opinion supported by reasoning. If, however, we could definitely quote to them the Act, it would be advantageous in attracting capital to Canada. So I would suggest the insertion of express permission to declare stock dividends.

I am not going to add anything to the discussion of the different points mentioned by Mr. Long and Mr. Stairs in respect of prospectuses, but I would like to bring out another phase of that question; and that phase is that companies are the instruments by which Canadians are able to attract money to Canada, and to invest their own savings in the development of Canadian industry. It is therefore to the interest of Canada that there shall not be unnecessary restrictions which will impede the getting of this money. When our investment bankers get the money they do not get it all in Canada; they go in part

to London and New York. Canadian securities have been coming back into popularity in England, we are very glad to say. But in England the investment banking system is conducted on different lines from our own. Over there they put a circular in the paper and sit down and wait for subscriptions to come in; but in our country we have to have well trained salesmen of a high class to go out and offer the securities, and in some cases these salesmen have to travel hundreds of miles in order to see one client. It is an expensive method, and if we were to publish in the London papers a statement disclosing the discount which fairly and reasonably is paid Canadian investment bankers, and alongside that if there were published a circular of an English company, with its much smaller expenses, can you imagine the comparison that would be made in the mind of the English investor? He does not know of the circumstances under which we work here. As we are doing our financing under different circumstances to those which exist in England, the requirements that suit England do not suit Canada. We must take these differences into consideration. Our investment bankers are drawing this money now from all the financial centres of the world, and we must help them to get it from all those places, and to present the case of Canada, the need for investment here and the opportunities for sound investment in Canada. In getting investors from those countries they should not be subjected to unnecessary impediments; we must let them have all the advantages and freedom that those other countries offer.

Now, why should our investment bankers selling securities in New York—which is not only an American centre of investment, but is the centre of large amounts of money from all parts of the investing world—why should we in going to New York for American money and foreign money, be obliged to use circulars and things of that character that include restrictions to which American investment bankers are not subject? These are some of the things which appeal to me as matters which we should keep before us in considering this question.

As to the whole question of prospectuses, I submit to you, gentlemen, that this legislation is not going to protect the investor, because you cannot protect a man who will not be protected. In the practice of my firm I have never heard of a Blue Sky return being referred to by a prospective purchaser of securities. These gentlemen who are here are here because they have a large practice in the realm of corporation finance, and they have been doing that work for many years. I have asked them how many cases they could remember in their experience where their firms have been called upon to defend an action for misrepresentation in a circular, or improper concealment in a circular, and there was not one case of this kind which they could recall in regard to a public issue. There was one case that one of these firms had had, but not one in regard to a public issue, the realm that we are now considering, in the experience of all those gentlemen. I submit that that indicates that the people who are doing the constructive financing in Canada, are not people against whom such restrictions are required. Such restrictions are required only with people who do not carry on business on proper principles. I repeat what was said by one of the former gentlemen, that I think it would be a very conservative estimate to say that 90 per cent of the financing is done by first rate houses. It seems to me to be very inadvisable to subject these people, who are doing the constructive work, to restrictions which are designed to prevent criminal practice by some irresponsible promoters whose contribution to the development of Canada is probably absolutely negligible in amount. I say, therefore, let us not put on restrictions that are going to impede financing that has as its purpose the development of Canada, in order to get at some people who are carrying on business in an improper way and who are so small that they cannot affect the

larger operations. I say that these people are subject, in the first place, to the Blue Sky laws of the different provinces; and in the second place, if they are Dominion companies, they must by a statement in lieu of prospectus put the information on record with the Secretary of State where it is available to anybody who wishes to refer to it. Further, in case of misrepresentation they are subject to action for recovery through the civil courts, and in addition they are subject to criminal law for any moneys fraudulently obtained. With all this protection, if a man has not sufficient judgment to invest his money, and if that protection is not enough for him, I submit that he can never be protected by any law which can be enacted, and that in endeavouring to protect him we should not go so far as to restrict constructive development of the country.

The CHAIRMAN: Have you an amendment that you want to submit?

Mr. COMMON: I would be pleased to prepare it. I have not drafted it yet, but when I have it ready I will leave it with the Secretary.

The CHAIRMAN: I think Mr. Hugessen has something to say to the Committee.

Hon. A. K. HUGESSEN, K.C.: I won't detain the Committee for any considerable time. I represent the firm of Lafleur, MacDougall, Macfarlane & Barclay, which acts for a number of clients in connection with corporate financing.

I wish in the first place to associate myself with what the gentlemen preceding me have said in regard to proposed amendments of the Act as to prospectuses. As they have dealt amply with the subject, there is nothing further that remains for me to say about it.

I also wish to support the suggestion made by Mr. Common, that a specific section should be inserted in the Act permitting companies to declare stock dividends, and for the same reasons which Mr. Common has already advanced. In that connection I may say that we in Quebec are not so slow, as we have a most adequate section in our provincial Act permitting companies incorporated under that Act to declare stock dividends. If we could have inserted in the Dominion Act something similar to the corresponding section of the Quebec Act, the improvement would be very considerable.

In relation to section 18 of the Bill, this repeats practically word for word the provisions presently contained in section 52 of the Act, which states that a company shall not allot any of its shares or debentures unless a prospectus or a statement in lieu of prospectus has been filed with the Department at Ottawa. As the Act now stands there is no provision for remedying any defect, if a company through inadvertence or negligence has failed to file a prospectus or statement in lieu of prospectus. As the Act stands at present it is absolutely prohibitive, and it means that everything done by the company after the omission to file the prospectus or statement, is illegal. I see that in section 16 of the Bill an attempt is made to remedy that, in the case of failure to file a prospectus, by providing that a Judge of the Superior Court of the province in which the company has its head office may, if the company applies and shows that it failed by inadvertence to file a prospectus and that nobody has been injured thereby, make an order that the time for filing be extended, and rectify the situation in any other way he thinks advisable. But I would point out to the Committee that the proposed section 50A does not remedy the situation where the company has failed to file a statement in lieu of a prospectus, instead of a prospectus. I think that section should be enlarged to take care of the case where a company has failed to file a statement in lieu of a prospectus. I feel that an amendment is in order, and, if the Committee permits, I will file with the Clerk the amendment I suggest.

One other matter to which I wish to refer is section 20 of the Bill, page 15, section 56C, by which it is proposed to have redeemable preference stocks. That question has been dealt with to some extent by Mr. Long, but I do wish to impress upon the Committee that the opinion of the counsel with whom I am associated is that we already have in the Act as it now stands all the powers that we require for the redemption of preferred stock. This proposed new section is taken from the English Act of 1928, which imports a new procedure in England, where it slightly widens the powers of companies. But if you bring it into our Act it restricts the powers that we now have. It is inapplicable, I submit, to our practice. In the first place it only permits preferred shares to be redeemed out of profits or out of the proceeds of a fresh issue of shares. As Mr. Long has pointed out, a company may wish to redeem preferred stock with the proceeds of the sale of a capital asset. It might quite conceivably wish to redeem preferred stock with an issue of bonds bearing a lower rate of interest. Both these things would be prohibited if this section were passed. I therefore submit that this section unnecessarily restricts the powers which companies already have and have had for many years under our Companies Act.

If there is any question that any member of the Committee would like to ask me, I shall be very pleased to answer to the best of my ability.

The CHAIRMAN: You will submit a memorandum of your proposed amendment?

Mr. HUGESSEN: Yes.

Mr. P. F. CASGRAIN, M.P.: In respect to the section which authorizes a Judge of the Superior Court in the Province where a Company has it head office to rectify the omission to file a prospectus, in certain cases, I do not know what might be the view of the Committee in regard to this and it might be well if Mr. Long would explain his opinion on this matter. It seems to be a departure from a long established practice. In the past all such matters have been left to the officials of the Department of the Secretary of State.

The CHAIRMAN: Do you desire to hear this matter explained now, or shall we postpone it until we take up the Bill section by section?

Mr. P. F. CASGRAIN, M.P.: I am just drawing the attention of the Committee to this matter, and when the Committee is going to take up the Bill later on we might have it discussed then.

The CHAIRMAN: I think that is the better way.

Mr. P. F. CASGRAIN, M.P.: I thank you very much, Mr. Chairman and honourable members of the Committee, for listening to the financial representatives and Counsel.

Hon. Mr. DANDURAND: I would suggest that the proceedings of this Committee be printed and distributed, and that the amendments which have been brought to the table and those that have been promised be incorporated in the report. I feel that we should have another meeting, and at that time we shall have the new Bill before us governing investment trust companies. Unfortunately that Bill may not be ready for distribution until early next week, so that I suggest we adjourn tentatively to the 1st or 2nd of May. I say tentatively, because the Chairman may fix another date if it does not suit the convenience of the Senate.

I would ask all who are here to give their names to the Clerk so that copies of the discussion of to-day may be sent to them, as well as the Bill which will be submitted to the Senate shortly, so that they may be able to consider the new Bill before the next meeting.

Hon. Mr. BEIQUE: Reference has been made to the requirements of several provinces as to prospectuses. Would it not be advisable to have drawn up for members of the Committee a statement showing the requirements of the respective provinces, so that we shall have to go into the various provincial laws. Of course, the Counsel can get this information for themselves.

The CHAIRMAN: I think Mr. Mulvey is prepared to have such a statement drawn up, and circulated to the members of the Committee before the next meeting.

Mr. MULVEY: Yes.

The Committee adjourned at the call of the Chair.

PROPOSED AMENDMENTS TO BILL (C), AN ACT TO AMEND THE COMPANIES ACT.

No. 1.

SUBMITTED BY MR. E. G. LONG, K.C.

Suggested Amendments to Remove Conditions Precedent on Commencing Business.

Strike out sub-section 8 of Section 9 as embodied in Section 6 of Bill "C".

Insert in clause 9 of the Bill after the words "twenty-one" the words "and twenty-eight".

No. 2.

SUBMITTED BY MR. E. G. LONG, K.C.

Suggested amendments regarding Prospectuses for the purpose of eliminating the provisions relating to a public Prospectus and limiting the same to filing what is now designated "A Statement in Lieu of Prospectus", but which if the Prospectus Sections are eliminated, could itself be termed a "Prospectus".

Eliminate from Bill "C" Sections 15, 16, 17 and 18, and substitute in lieu thereof the following:—

"Sections 49, 50 and 51 of the principal Act are hereby repealed."

"Section 52 of the principal Act is hereby repealed and the following is substituted therefor:—

"52. (1) A Company upon the issue and allotment or sale of any shares or debentures other than an issue and allotment or sale in respect of which a Prospectus has already been filed, shall forthwith file with the Secretary of State a Prospectus in the form and containing the particulars set out in Form F in the schedule to this Act, signed by every person who is named therein as a Director or a proposed Director of the Company or by his agent authorized in writing.

"(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the 1st day of January, 1929.

"(3) This section shall not apply to the issue and allotment or sale of shares or debentures to existing Shareholders or Debentureholders of a Company whether with or without the right to renounce in favour of other persons, but, subject as aforesaid, shall apply to every other issue and allotment or sale of shares or debentures.

"(4) Upon default in the filing of any such Prospectus for a period of more than ten days, each Director and every person acting as a representative in Canada of the Company in relation to any such issue and allotment or sale of shares or debentures, shall be liable upon summary conviction to a penalty of $20 for each day of such default, and in default of payment thereof to imprisonment for a term not exceeding three months."

"Section 40 of the principal Act is hereby amended by striking out the words 'Statement in Lieu of' in the 6th line of the said Section."

The first clause of sub-section (2) of Section 103 as embodied in Section 26 of the Bill should read as follows:—

"(2) A Person shall not be named as a Director or proposed Director of a Company in any Prospectus filed by the Company unless before the filing of the Prospectus he has by himself or his agent authorized in writing".

In new form F to Bill "C" strike out the words "Statement in Lieu of" in the first line of the heading, and strike out the note at the end of the form on page 29 of the Bill.

NOTE.—It may be necessary to correct the references to Section numbers in sub-section 6 of Section 8 and sub-section 1 of Section 153 of the principal Act and Section 39 of the Bill to harmonize any new numbering of the Sections occasioned through the amendments in the Bill.

No. 3.

SUBMITTED BY MR. E. G. LONG, K.C.

Re Redemption of Preference Shares

Eliminate from Section 56 (*c*), embodied in Section 20 of the Bill, subsection (1), and in lieu of subsection (3) of Section 56 (*c*) insert the following:—

"The redemption of Preference Shares may be effected on such terms and in such manner as may be provided by the By-laws of the Company or if the Preference Shares were created by Letters Patent or Supplementary Letters Patent, subject to the provisions of such Letters Patent or Supplementary Letters Patent; and subsection 6 of Section 56 shall not apply to any By-law which creates or attempts to create redeemable or convertible Preference Shares."

NOTE:—The foregoing clause is intended to make clear that where redeemable or convertible Preference Shares are lawfully created, either by By-law or Letters Patent, redemption or conversion may take place without the necessity of taking proceedings by way of reduction of capital.

No. 4

SUBMITTED BY MR. E. G. LONG, K.C.

Re Accounts

Eliminate from subsection (4) of Section 119 (*a*) as embodied in Section 30 of the Bill, all of such subsection following the words "the Company's affairs" in the 7th line of such subsection 4.

No. 5

SUBMITTED BY MR. E. G. LONG, K.C.

Re Information as to Mortgages, Charges, etc.

Strike out subsection 8 of Section 85 as embodied in Section 24 of the Act, and substitute the following:—

"The Company shall cause to be endorsed on every debenture or certificate of debenture stock which is issued by the Company and the payment of which is secured by the mortgage or charge so registered, a

memorandum or statement that such mortgage or charge has been registered pursuant to this Act, but nothing in this subsection shall be construed as requiring a Company to cause such memorandum of registration of any mortgage or charge so given to be endorsed or any debenture or certificate of debenture stock which has been issued by the Company before the mortgage or charge was created."

"Subsection 3 of Section 91 of the principal Act is hereby amended by striking out the words 'a copy of the Certificate' in the 5th line of said subsection and substituting in lieu thereof the words 'a memorandum or statement'".

No. 6

(See also Revised Amendment No. 8)

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendment to Section 6 of Bill, Subsection (4) of Section 9 of Principal Act

For subsection (4) of Section 9 of the principal Act, as repealed and substituted by Section 6 of the Bill, substitute the following:—

"(4) *In the absence of other provisions in that behalf in the Letters Patent, Supplementary Letters Patent or By-laws of the Company,* the issue and allotment of shares *without nominal or par value* authorized by this section may be made from time to time for such consideration as may be *fixed by the Board of Directors of the Company.*"

No. 7

(See also Revised Amendment No. 9)

SUBMITTED BY MR. G. S. STAIRS, K.C.

ment to Section 6 of Bill, Subsection (6) of Section 9 of Principal Act

"(6) The amount of capital with which the company shall carry business shall not be less than the aggregate amount of the considera- for the issue and allotment of the shares without nominal or par from time to time outstanding, and in addition thereto an amount to the total nominal amount of all other issued and outstanding es of the capital stock of the company issued as fully paid and the otal amount for the time being paid up on such other shares of the capital stock of the company as are issued and outstanding otherwise than fully paid."

No. 8

(Revised Amendment No. 6)

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendment to Subsection 5 of Section 6 of Bill

(Subsection (5) of section 9 of Principal Act)

Including Suggestion for Method or Permitting Establishment of Surplus on Issue of No Par Stock

For subsection five of section nine of the principal Act as repealed a substituted by section five of the Bill substitute the following:—

"(5) Any and all shares issued as permitted by this section sh be deemed fully paid and non-assessable *on receipt by the company the consideration for the issue and allotment of such shares fixed accordance with the provisions of subsection (4) of this section,* and holder of such shares shall not be liable to the company or to creditors in respect thereof."

No. 9

(Revising Amendment No. 7)

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendment to Subsection 6 of Section 6 of Bill

(Subsection (6) of section 9 of Principal Act)

Including suggestion for method or permitting establishment of surplus on issue of no par stock

For subsection (6) of section nine of the principal Act as repealed and substituted by section six of the Bill substitute the following:—

"(6) The amount of capital with which the company shall carry on business shall be not less than the aggregate amount of the par value of outstanding fully paid par value shares, if any, or of any less amount paid up on par value shares, together with the amount of the consideration received upon the issue and allotment of the shares without nominal or par value from time to time outstanding, or such portion of such consideration as shall on or before the issue and allotment of any such shares without nominal or par value from time to time b declared to be capital in accordance with any provisions in that behal in the letters patent, supplementary letters patent, or by-laws of th company, or, in the absence of any such provisions, as shall be declared by the directors, and any balance of the consideration received over and above the portion thereof declared to be capital accordance with the provisions of this subsection shall be distributa surplus."

No. 10

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendments to Sections 29 and 30

29. The principal Act is hereby amended by adding to secti following subsection:—

"(2) Such books shall, during reasonable business hours of eve day, except Sundays and holidays, be kept open, at the chief place o business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder, any of whom may make extracts therefrom."

30. Sections 118 and 119 of the principal Act are hereby repealed and the following substituted therefor:—

"118. A register of transfers shall be provided in which shall be entered the particulars of every transfer of shares in the capital of the company.

"(2) The register of transfers shall be kept by the secretary or by such other officer or officers as may be specially charged with that duty or by such other agent or agents as may from time to time be appointed for the purpose by the Company.

"(3) Unless otherwise provided in the letters patent or by-laws of the company the register of transfers may be kept at the chief place of business of the company or at such other office or place as may from time to time be appointed by the directors, and one or more branch regis-

ters of transfers may be kept at such office or offices of the company or other place or places as may from time to time be appointed by the directors.

"(4) Unless the register of transfers is kept at the chief place of business of the company a book or books shall be kept at such chief place of business of the company in which shall be entered a copy of the particulars of every transfer of shares in the capital of the company, but entry of the particulars of the transfer of shares in the capital of the company in a register or branch register of transfers kept elsewhere than at such chief place of business of the company shall for all purposes of this Part be a complete and valid transfer.

"(5) Such books during reasonable business hours of every day except Sundays and holidays shall, at the places where they are respectively authorized by this section to be kept, be open for the inspection of shareholders and creditors of the company and their personal representatives and of any judgment creditor of a shareholder, any of whom may make extracts therefrom."

"119. Every company shall cause to be kept proper books of account with respect to—

"(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

"(*b*) all sales and purchases of goods by the company;

"(*c*) the assets and liabilities of the company.

"(2) The books of account shall be kept at the chief place of business of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

"(3) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months;

(Continue as in 119A of the Bill.)

No. 11

SUBMITTED BY HON. A. K. HUGESSEN

Amendment to Section 16 of the Bill

For Section 50A, as enacted by Section 16 of the Bill, substitute the following:—

"50A. The Secretary of State, on being satisfied that the omission to file either a prospectus or a statement in lieu of prospectus as required by this Act, or that the omission or mis-statement of any particular prescribed to be contained in such prospectus or statement in lieu of prospectus, was accidental, or due to inadvertence, or some other sufficient

cause, or is not of a nature to prejudice the position of subscribers to any issue of shares or securities referred to in such prospectus or statement in lieu of prospectus, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or of any person interested, and on such terms and conditions as may seem to him just and expedient, order that the time for filing be extended, or as the case may be, so that the omission or mis-statement may be rectified."

No. 12

SUBMITTED BY MR. FRANK B. COMMON, K.C.

Proposed Amendment to Confer Statutory Authority for Payment of Stock Dividends

"The directors may provide for the amount of any dividend that they may lawfully declare shall be paid, in whole or in part, in capital stock of the company and for that purpose they may authorize the issue of shares of the company as fully paid or partly paid, or may credit the amount of such dividend on the shares of the company already issued but not fully paid, and, in the latter case, the liability of the holders of such shares shall be reduced by the amount of such dividend."